

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 536 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

AGRAWAL BANWARILAL BABULAL

Versus

M.N.SOLANKI AND OTHERS

Appearance:

Special Criminal Application No. 536 of 1989

MR SR SHAH for Petitioners

MR VIMAL PATEL for M/s.NANAVATI ASSOCIATES for Respondent No. 1

MR M.A. PATEL, APP for Respondent No. 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/08/98

ORAL JUDGEMENT

Heard learned Advocate Mr.S.R.Shah for the petitioners; learned Advocate Mr.Vimal Patel on behalf of M/s.Nanavati Associates for respondent no.1 and learned APP Mr.M.A.Patel for respondents nos.2 and 3.

The petitioners have challenged the legality, validity and propriety of the composite order passed by the learned Sessions Judge, Mehsana, in the proceedings of Criminal Revision Application No.19 of 1989 along with the proceedings of Criminal Appeal Nos.20 and 21 of 1989, on 24th April 1989.

That Criminal Revision Application was preferred by the present petitioners against the order of learned JMFC, Visnagar, dated 21.4.1988 in the proceedings of Criminal Case No.1622 of 1987, directing respondent no.1 to sell the goods seized from the petitioners by respondent no.3 on the allegation that the said goods was transported in violation of the provisions of Indian Forest Act and Rules and handed over to respondent no.1, while Criminal Appeal Nos.20 and 21 of 1989 are filed by petitioner no.1 and 2 respectively, against the order of respondent no.3 to confiscate the goods of "Salaigum" seized from the custody of the petitioners on the allegation that the same was illegally transported in violation of the provisions of the Indian Forest Act, 1971.

That the learned Sessions Judge, Mehsana, has decided vide the impugned order and allowed the Criminal Revision Application No.19 of 1989 partly and has modified the order holding that respondent no.1 shall dispose of the said goods by auction, however, with an additional condition that respondent no.1 shall keep 20 days' time in between the publication of notice and holding auction. The learned Sessions Judge has allowed Appeal Nos. 20 and 21 of 1989 and has quashed and set aside the order passed by respondent no.1.

It may be noted that the goods seized by respondent no.3 from the custody of the petitioners was not produced before any criminal Court in the proceedings filed against the present petitioners by respondent no.1. The said fact has not been disputed by any of the respondents. Mr.S.R. Shah, learned Advocate has pointed out that originally, under the provisions of Section 58 of the Forest Act, 1971, the concerned Magistrate having jurisdiction over the subject matter, was empowered to dispose of perishable forest produce seized by the authority. However, as per the amendment effected in 1983, such powers were taken away from the Magistrate and as per the amended provisions of the Act, only respondent no.1 or authorised persons are empowered to dispose of the goods of forest produce after the disposal of criminal proceedings.

It is further submitted by Mr. Shah that, the subject goods was entrusted to respondent no. 1 by respondent no.3 after having seized the same from the petitioners, but the same was not produced as muddamal in the Court during the proceedings of criminal complaint filed in the Court of JMFC against the present petitioners by respondent no.1. Under such circumstances, the learned JMFC, Visnagar had no jurisdiction to direct present respondent no.1 to dispose of the said goods as the same was not produced in the Court as muddamal and is not covered under the provisions of Section 451 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code").

Section 451 of the Code is set out hereunder:

"451. Order for custody and disposal of property pending trial in certain cases. - When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of."

Mere perusal of the provisions of Section 451 of the Code suggests that the Magistrate can order for disposal of muddamal article or property provided the same is produced before the Court. In the instant case, it is undisputed that the subject goods of "Salaigum" seized by respondent no.3 has remained in the custody of respondent no.1 Corporation and the said goods was not produced by respondent no.1 in the said criminal proceedings filed against the present petitioners. Under such circumstances, the provisions of Section 451 cannot be attracted and the learned JMFC, Visnagar, has no power or authority to pass any order regarding the disposal of the said goods. As a result of that, the order passed by the learned JMFC, Visnagar, in the proceedings of Criminal Case No.1622 of 1987 is null and void as passed without jurisdiction and on the said ground learned Sessions Judge, while deciding Criminal Revision Application No.19 of 1989 ought to have quashed and set aside the said order.

On the basis of the aforesaid discussion, the

petition is allowed. The impugned order passed by learned Sessions Judge, Mehsana, partly confirming the order passed by the learned JMFC, Visnagar, in respect to disposal of subject goods only in the proceedings of criminal revision application No.19 of 1989 is hereby quashed and set aside. While remaining order passed in respect to Criminal Appeals No.20 and 21 of 1989 stands confirmed. Rule is made absolute accordingly. No order as to costs.

sreeram.